

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LESLIE WHITE.

Plaintiff,

V.

ETHICON, INC.,

## Defendant.

CASE NO. C20-952 BHS

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT RE  
PUNITIVE DAMAGES**

This matter comes before the Court on Defendant Ethicon Inc.'s motion for

summary judgment, Dkt. 99, and the Court’s order reserving ruling on the availability of punitive damages, Dkt. 116.

## I. FACTUAL & PROCEDURAL BACKGROUND

The Court reincorporates by reference the relevant factual and procedural background found in the underlying order. *See* Dkt. 116 at 1–5. Plaintiff Leslie White alleges that she suffered injuries because of her TVT-Exact implant—a polypropylene mesh implant created by Ethicon—and brings claims under the Washington Products Liability Act (“WPLA”), RCW Ch. 7.72. *See generally* Dkt. 4.

1       Ethicon moved for summary judgment on White's claims, Dkt. 99, and on January  
 2 14, 2022, the Court granted the motion in part, denied it in part, and reserved ruling in  
 3 part, Dkt. 116. In the underlying order, the Court requested supplemental briefing from  
 4 Ethicon on the availability of punitive damages. *See* Dkt. 116 at 15–16. White argues that  
 5 under Washington's choice of law analysis her claim for damages is governed by New  
 6 Jersey law, which permits punitive damages in product liability cases. Dkt. 113 at 22–25.  
 7 Ethicon argues in its surreply that the WPLA is the exclusive remedy for product liability  
 8 claims and does not permit punitive damages. Dkt. 117.

## 9                                  II.     DISCUSSION

10       In determining which state's substantive law applies in a diversity action, federal  
 11 courts must apply the forum state's choice-of-law rules. *Fields v. Legacy Health Sys.*, 413  
 12 F.3d 943, 950 (9th Cir. 2005) (quoting *Patton v. Cox*, 276 F.3d 493, 495 (9th Cir. 2002)).  
 13 “In resolving conflict of law tort questions, Washington has abandoned the *lex loci delicti*  
 14 rule and follows the *Restatement (Second) of Conflict of Laws*' most significant  
 15 relationship test.” *Singh v. Edwards Lifesciences Corp.*, 151 Wn. App. 137, 143 (2009)  
 16 (citing *Johnson v. Spider Staging Corp.*, 87 Wn.2d 577, 580 (1976)). “Washington courts  
 17 have held that these same choice of law principles apply to the issue of punitive  
 18 damages.” *Id.* at 144–45 (examining *Kammerer v. W. Gear Corp.*, 96 Wn.2d 416 (1981);  
 19 *Barr v. Interbay Citizens Bank of Tampa, Fla.*, 96 Wn.2d 692 (1981)).

20       In determining which jurisdiction has the most significant relationship to a  
 21 particular issue, which in this case is the availability of punitive damages, the Court first  
 22 weighs “(a) the place where the injury occurred, (b) the place where the conduct causing

1 the injury occurred, (c) the domicile, residence, nationality, place of incorporation and  
 2 place of business of the parties, and (d) the place where the relationship, if any, between  
 3 the parties is centered.” *Id.* at 143 (citing *Johnson*, 87 Wn.2d at 581). If these contacts are  
 4 balanced, the second step is to consider “the interests and public policies” of the  
 5 concerned states. *Johnson*, 87 Wn.2d at 582.

6       Ethicon argues that White’s claim for punitive damages should be dismissed with  
 7 prejudice because the WPLA is the exclusive remedy for product liability claims in  
 8 Washington. *See Wash. Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 853–54  
 9 (1989) (en banc). Indeed, White conceded the dismissal of her non-WPLA claims, Dkt.  
 10 113 at 2, and her remaining substantive claims are her failure to warn claim, her design  
 11 defect claim under the consumer expectations test, and her claim under RCW 7.72.030,  
 12 *see* Dkt. 116. All that remains are WPLA claims. Ethicon argues that White fails to  
 13 identify a Washington case allowing punitive damages under the law of a foreign  
 14 jurisdiction where the sole basis for recovery is the WPLA. Dkt. 117 at 2–3.

15       The Court agrees. None of White’s cited case law supports the proposition that  
 16 punitive damages under foreign law is permissible based on a claim governed solely by  
 17 Washington law. For example, in *Kammerer*, the Washington Supreme Court held that  
 18 California law governed the plaintiffs’ fraud claims and permitted an award of punitive  
 19 damages under California law. *See* 96 Wn.2d at 422–24. Here, Washington law governs  
 20 White’s product liability claims, and the WPLA does not permit punitive damages.  
 21 *Laisure-Radke v. Par Pharm., Inc.*, 426 F. Supp. 2d 1163, 1174 (W.D. Wash. 2006). The  
 22 Court reached a similar result in *Bryant v. Wyeth*, 879 F. Supp. 2d 1214 (W.D. Wash.

1 2012). There, the Court concluded that Pennsylvania law applied to the plaintiff's fraud  
2 claims and that Pennsylvania law permitted punitive damages arising from the fraud. *Id.*  
3 at 1224. But the Court rejected the plaintiff's request for punitive damages for her WPLA  
4 claims because there was no authority supporting the application of Pennsylvania's  
5 punitive damages law to claims other than fraud. *Id.* at 1220 n.5. The Court thus agrees  
6 with Ethicon that punitive damages are unavailable here because White's only remaining  
7 claims are pursuant to the WPLA, which is the exclusive remedy for product liability  
8 claims and which prohibits punitive damages.

9         But even if the Court engaged in a choice of law analysis, the result would be the  
10 same. In considering which state has the most significant relationship, the Court  
11 concludes the contacts are balanced. White's injury occurred in Washington, where she  
12 resides, and Ethicon is headquartered in New Jersey. "In a products liability action, the  
13 place where the conduct causing the injury occurred is the place where the defendant  
14 designed, manufactured, or was otherwise involved with the product in question." *Brewer*  
15 *v. Dodson Aviation*, 447 F. Supp. 2d 1166, 1179 (W.D. Wash. 2006) (internal quotations  
16 omitted). White asserts that Ethicon designed and manufactured the TVT-Exact in New  
17 Jersey. Finally, Ethicon had no direct contact or relationship with White. But to the extent  
18 there is a relationship between the parties, it is centered in New Jersey. *See Zenaida-*  
19 *Garcia v. Recovery Sys. Tech., Inc.*, 128 Wn. App. 256, 263 (concluding that the place  
20 where the relationship was centered was where the unsafe design occurred). These  
21 contacts are evenly balanced, and the Court turns to the second step of the choice of law  
22 analysis. *See id.* (finding balanced contacts between Washington and Oregon where

1 Oregon was the location of the injury and residence of the victim and Washington was  
2 the headquarters of the defendant, where the relationship was centered, and where the  
3 conduct causing the injury occurred).

4 Washington's interest in this case is stronger. Other Washington courts have  
5 concluded that the state in which the defendant corporation is located has a strong interest  
6 in applying its law. *See, e.g., Singh*, 151 Wn. App. at 147–48. But White's cited cases did  
7 not address claims solely brought under the WPLA. Rather, Washington has a  
8 longstanding prohibition against punitive damages and has made the WPLA the exclusive  
9 remedy for products liability cases in this state. *See Dailey v. N. Coast Life Ins. Co.*, 129  
10 Wn.2d 572, 574 (1996) (discussing Washington's policy against punitive damages).  
11 Washington's interest in the exclusivity of the WPLA and its prohibition of punitive  
12 damages outweighs any interest that New Jersey may have in enforcing its punitive  
13 damages rules. Therefore, even under a choice of law analysis, Washington law would  
14 control here and preclude punitive damages.

### III. ORDER

16 Therefore, it is hereby **ORDERED** that Ethicon's motion for summary judgment  
17 on White's demand for punitive damages, Dkt. 99, is **GRANTED**, and White's damages  
18 request is **DISMISSED with prejudice**.

19 Dated this 3rd day of February, 2022.

  
BENJAMIN H. SETTLE  
United States District Judge